No. 82-2033

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1982

ASSOCIATED BUILDERS & CONTRACTORS, etc., et al.,
Petitioners,

vs.

CARPENTERS VACATION AND HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA, et al.,
Respondents.

BRIEF OF TRUST FUND RESPONDENTS

**In Opposition
to the Petition for a Writ of Certiorari to
the United States Court of Appeals for the
Ninth Circuit**

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Respondents Carpenters Vacation and Holiday Trust Fund for Northern California and Gordon W. Hanson; Richard Clark; Charlie Petersen; James Whittaker, Hoyle Haskins; L.E. Bee; Russell Pool, individually and as trustees for said Carpenters Vacation and Holiday Trust Fund ("Trust Fund respondents") oppose the petition for writ of certiorari filed herein and respectfully submit that the petition should be denied for the following reasons:

I

PRELIMINARY STATEMENT

This case does not present the questions stated by petitioners in their petition.

The issues posed by those questions relate to the dues check-off procedure in effect prior to the 1981 amendment to the applicable collective bargaining agreement (the 1981 Master Agreement). The Court of Appeals expressly refrained from deciding those issues for the reasons given in footnotes 4 and 5 to its opinion (Appendix to Petition, pp. 13-14). Respondents submit that these reasons are valid. It is clear, moreover, that the sufficiency of the reasons does not warrant plenary review by this Court.

II

THE DECISION OF THE COURT OF APPEALS

The Court of Appeals held that the dues check-off procedure provided in the 1981 Master Agreement complied with the requirements of Section 302(c)(4) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(4), and was therefore valid.

The Court summarized the procedure as follows (Appendix to Petition, pp. 3-4, 13):

> "Under the 1981 Master Agreement, supplemental dues are assessed against each employee at the rate of twenty-five cents per hour worked. Every month, each employer sends a check in an amount equal to the total supplemental dues assessed against all employees working for that employer during that month to the employer's designated agent, Lloyds Bank of California (Lloyds). For each employee's paycheck, the amount remitted to Lloyds as supplemental dues for that employee is deducted from total taxable

wages. Lloyds deposits the monies remitted by the employer as supplemental dues in a special account. Once a month, the bank transfers the monies from the account in part to the Union (for payment of supplemental dues), and in part to the Trust Fund (for payment of additional vacation and holiday benefits), based on an allocation between monies designated as supplemental dues by employees and monies as to which there is no outstanding check-off authorization."

* * *

"[3]For each employee who has authorized a check-off of dues, the Union receives a monthly disbursement from Lloyds in payment of supplemental dues for all work performed that month by that employee for all employers. Conversely, for each employee who has not authorized a check-off, the bank transfers the amount previously designated as 'supplemental dues' to the Trust Fund for credit to the employee's vacation and holiday benefits account. The Union must obtain the supplemental dues owed by that employee in some other manner."

The Court concluded that (*Id.*, p. 7):

"In this case, the provision in the 1981 Master Agreement permitting an employer to designate a bank as its agent to receive authorizations and revocations **is a reasonable adaptation of the requirements of section 302(c)(4) to the transitory nature of employment in the construction industry.** A contractual requirement that each employee must send authorizations and revocations directly to each of the employee's employers would be impractical because an employee ordinarily works for several different employers during the course of a year."[1]

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[1]Emphasis is added throughout this brief unless otherwise noted.

The Court said, further, that (*Id.*, pp. 8-9):

> "The dues check-off procedure of section 302(c)(4) is designed to ensure not only the 'protection of the employee' but also administrative convenience in the collection of dues. *NLRB v. Atlanta Printing Specialties and Paper Products Union 527*, 523 F2d 783, 786 (5th Cir. 1975); *Anheuser-Busch, Inc. v. International Brotherhood of Teamsters, Local 822*, 584 F.2d 41, 43 (4th Cir. 1978). **Given the transitory nature of employment in the construction industry,** we conclude that the Union cannot be expected to provide individual authorization cards to each employer with whom an employee might work; conversely, an employer simply cannot reasonably be required to make separate deductions for dues and fringe benefits from an employee's 'wages', to do the bookkeeping for such allocations, and to submit separate checks for each. **To prohibit the employers in this case from designating an agent to allocate dues and fringe benefits from employee 'wages' deductions would frustrate the legislative purpose of section 302(c)(4), since no other practical manner exists to ensure the remittance to the Union of those dues that employees have voluntarily and affirmatively authorized the employer to deduct."**

III

REVIEW ON WRIT OF CERTIORARI SHOULD BE DENIED FOR THE REASON THAT THE DECISION OF THE COURT OF APPEALS IS IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS COURT

The decision of the Court of Appeals that the dues check-off procedure provided in the 1981 Master Agreement complied with the requirements of Section 302(c)(4) of the Labor Management Relations Act, 29 U.S.C. § 186

(c)(4), is correct and is in accord with applicable decisions of this Court.

In construing Section 2 Eleventh (b) of the Railway Labor Act, 45 U.S.C. § 152, Eleventh (b), which is similar in terms and purpose to LMRA Section 302(c)(4), this Court said in *Felter v. Southern Pacific Co.*, 359 U.S. 326, 79 S.Ct. 847 (1959), as follows (359 U.S. at pp. 333-335, 79 S.Ct. at pp. 853-854):

> "The structure of § 2 Eleventh (b) then is simple: carriers and labor organizations are authorized to bargain for arrangements for a checkoff by the employer on behalf of the organization. Latitude is allowed in the terms of such arrangements, but not past the point such terms impinge upon the freedom expressly reserved to the individual employee to decide whether he will authorize the checkoff in this case . . . . Of course, the parties may act to minimize the procedural problems caused by Congress' choice. **Carriers and labor organizations may set up procedures through the collective agreement for processing, between themselves, individual assignments and revocations received, and carriers may make reasonable designations, in or out of collective bargaining contracts, of agents to whom revocations may be sent.** Revocations, after all, must be sent somewhere."

The decision of the Court of Appeals gives effect to the intent of Congress, evidenced by the addition of Section 8(f) to the National Labor Relations Act in 1959, 29 U.S.C. § 158(f), that federal labor law accommodate to the transitory nature of employment in the construction industry. In so doing, the decision is in accord with this Court's holding earlier this term in *Jim McNeff, Inc. v. Todd*, ... U.S. ....., 103 S.Ct. 1753 (1983), that monetary obliga-

tions accrued under a prehire contract authorized by Section 8(f) can be enforced, prior to repudiation of the contract, in a suit brought by a union against an employer under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, absent proof that the union represented a majority of the employees.

In *Jim McNeff, Inc.*, the Court said (..... U.S. ....., 103 S.Ct. pp. 1756-1759):

> "Thus, § 8(f) allows construction industry employers and unions to enter into agreements setting the terms and conditions of employment for the workers hired by the signatory employer without the union's majority status first having been established in the manner provided for under § 9 of the Act. **One factor prompting Congress to enact § 8(f) was the uniquely temporary, transitory and sometimes seasonal nature of much of the employment in the construction industry.** Congress recognized that construction industry unions often would not be able to establish majority support with respect to many bargaining units.... Congress was also cognizant of the construction industry employer's need to 'know his labor costs before making the estimate upon which his bid will be based' and that 'the employer must be able to have available a supply of skilled craftsmen for quick referral.'
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> • • •
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> "Apart from not offending the concerns noted in *Higdon*, allowing a minority union to enforce overdue obligations accrued under a pre-hire agreement prior to its repudiation vindicates the policies Congress intended to implement in § 8(f). **Congress clearly determined that pre-hire contracts should be lawful to meet problems unique to the industry.** However limited the binding effect of a prehire agreement may be, it strains

> both logic and equity to argue that a party to such an agreement can reap its benefits and then avoid paying the bargained for consideration. Nothing in the legislative history of § 8(f) indicates Congress intended employers to obtain free the benefits of stable labor costs, labor peace, and the use of the union hiring hall. Having had the music, he must pay the piper."

The fact that in this case the accommodation of federal labor law to "problems unique to the construction industry" was accomplished through the collective bargaining process rather than through amendment of the law does not distinguish this case from *Jim McNeff, Inc.* The collective bargaining was pursuant to the mandate of federal labor law and, as the Court of Appeals held, the solution of the problem addressed was well within the authority of the collective bargaining parties under that law (see *Local 24, International Teamsters etc. v. Oliver,* 358 U.S. 283, 296, 79 S.Ct. 297, 304; *United Mine Workers of America Health and Retirement Funds v. Robinson,* 455 U.S. 562, 102 S.Ct. 1226, 1234).

IV

CONCLUSION

For the foregoing reasons the Trust Fund respondents respectfully submit that the petition for a writ of certiorari should be denied.

Dated, San Francisco,

July 5, 1983.

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